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Dato' Ting Ching Lee v Ting Siu Hua

B FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-27–08 OF 2024(Q)
ABDUL RAHMAN SEBLI CJ (SABAH AND SARAWAK), NORDIN HASSAN AND ABDUL KARIM FCJJ
26 FEBRUARY 2025

C

Contract — Illegality — Gaming or wagering — Whether defendant could not sue to recover credit facilities granted to plaintiff to gamble at casino — Whether credit facilities were not a pure loan transaction independent of the gambling element but was a composite gambling contract — Whether grant of the credit D *facilities was part and parcel of a gaming and wagering contract which was null and void and unenforceable under ss 26 of Civil Law Act 1956 and s 31 of Contracts Act 1950*

The respondent was appointed as a promoter or junket by the Huang Group E — and paid a commission for his services — to bring in players, especially wealthy ones, to gamble at casinos. The Huang Group had an arrangement with the Naga Casino in Cambodia to facilitate gambling activities. In early 2015, the respondent organised a two-day trip for the appellant and four others (including THN and NTY) — all of them from Sarawak — to gamble at Naga F Casino Cambodia. On the appellant's request, the Huang Group granted him a USD1.5m line of credit and a rolling rebate of USD193,800 to gamble at the casino. Following their return to Sarawak, the appellant, THN and NTY alleged that the respondent had defamed them by causing notices to be published in a local Chinese-language newspaper as well as on a social-media G platform alleging that they owed debts to the Huang Group and had a week to settle the same failing which legal action would be taken against them. The trio sued the respondent for damages for defamation. In response, the respondent counterclaimed against the appellant for re-payment of the aforesaid credit facilities that was granted to him. The High Court dismissed both the H defamation claim as well as the respondent's counterclaim — the former because it was not proven; the latter, because it was an attempt to recover a gambling debt, which was impermissible under ss 24 and 31 of the Contracts Act 1950 and s 26 of the Civil Law Act 1956. Both parties appealed against the decision to the Court of Appeal ('COA') which unanimously affirmed the I dismissal of the defamation claim but allowed the respondent's counterclaim. The COA held, inter alia, that: (a) there was an oral agreement between the appellant and the respondent to obtain the credit line and the rolling rebate for the purpose of gambling at Naga Casino; (b) the counterclaim was not for the recovery of a gambling debt; and (c) the credit facilities granted to the appellant

were in the nature of a loan to enable him to purchase gambling chips at the casino. The Federal Court granted the appellant leave to appeal against the COA's decision.

Held, unanimously allowing the appeal, setting aside the COA's decision with respect to the respondent's counterclaim and restoring the decision of the High Court:

(1) Under Malaysian law, any contract or agreement by way of gaming or wagering was unlawful and null and void and any action to recover a gambling debt was unenforceable — per s 26 of the Civil law Act 1956 ('the CLA') and ss 31 and 24 of the Contracts Act 1950 ('the CA') (see paras 30–34).

(2) It was undisputed that the credit lines and the rolling rebate that were granted to the appellant were solely to enable him to buy Naga Casino's gambling chips so that he could gamble at the casino. The credit facilities, therefore, could not be termed as a genuine loan independent of the appellant's gambling activities at the casino. The reality of the transaction had to be examined objectively and in totality. In the present case, the reality was that the granting of the credit facilities to the appellant was a gaming or wagering transaction that was null and void under s 26 of the CLA and s 31 of the CA and was also against public policy under s 24(d) of the CA. In reality, the respondent was claiming for recovery of a gambling debt. Such a claim was unenforceable under Malaysian law (see paras 38, 41, 43, 69, 82–83 & 92).

(3) The STG agreement signed between Naga Casino and Huang Group fortified the fact that the granting of credit facilities to players to gamble at Naga Casino was part and parcel of the gaming transactions. Any gambling activity at the casino had to use the casino's chips as the only acceptable legal tender there. The credit facilities granted to the appellant to buy the casino chips could be termed as a composite gambling contract (see paras 48, 55 & 61).

(4) The respondent's reliance on the case of *Wynn Resorts (Macau) SA v Poh Yang Hong* [2019] MLJU 2003 was untenable. That case was no longer good law. The trial judge in that case did not consider the reality of the transaction in granting the credit facility to the defendant, just as the COA had failed to consider the reality of the transaction in the instant case. In reality, the credit facility in *Wynn*'s case was to obtain casino chips for gambling and for no other reason. It was a composite gambling contract. The mere signing of a credit agreement did not make the transaction lawful and enforceable. The credit agreement could not be separated from the gaming transaction at the casino as the credit facility granted was an essential component of the gambling activities using only the casino chips. To accept the ratio in *Wynn*'s case would be to defeat the

intention of the Legislature in enacting laws to curb gambling or wagering (see paras 71–73).

(5) The respondent's submission that the Federal Court's refusal to grant leave to appeal in *Wynn*'s case meant that it agreed with the COA's decision on the merits was flawed. In a leave application, the Federal Court only considered whether the threshold of s 96 of the Courts of Judicature Act 1964 had been met; whether there existed any novel issue or whether a further decision of the Federal Court was of public advantage. The merits of the case was not one of the considerations in the leave application (see para 76).

[Bahasa Malaysia summary

Responden telah dilantik sebagai penganjur atau *junket* oleh Huang Group — dan dibayar komisen untuk perkhidmatannya — untuk membawa masuk pemain, terutamanya yang kaya untuk berjudi di kasino. Huang Group mempunyai perjanjian dengan Naga Casino di Kemboja untuk membantu aktiviti perjudian. Pada awal tahun 2015, responden menganjurkan lawatan dua hari untuk perayu dan empat yang lain (termasuk THN dan NTY) — kesemuanya dari Sarawak — untuk berjudi di Naga Casino Cambodia. Atas permintaan perayu, Huang Group memberinya talian kredit USD1.5 juta dan rebat pusingan sebanyak USD193,800 untuk berjudi di kasino. Selepas mereka pulang ke Sarawak, perayu, THN dan NTY mendakwa bahawa responden telah memfitnah mereka dengan menerbitkan notis dalam sebuah akhbar berbahasa Cina tempatan serta di platform media sosial yang mendakwa bahawa mereka berhutang kepada Huang Group dan mempunyai seminggu untuk menyelesaikannya sekiranya gagal tindakan undang-undang akan diambil terhadap mereka. Ketiga-tiga mereka menyaman responden untuk ganti rugi kerana fitnah. Sebagai tindak balas, responden menuntut balas terhadap perayu untuk pembayaran balik kemudahan kredit yang diberikan kepadanya. Mahkamah Tinggi menolak kedua-dua tuntutan fitnah serta tuntutan balas responden — yang pertama kerana ianya tidak berjaya dibuktikan; yang terakhir, kerana ianya adalah percubaan untuk mendapatkan semula hutang perjudian yang tidak dibenarkan di bawah ss 24 dan 31 Akta Kontrak 1950 dan s 26 Akta Undang-Undang Sivil 1956. Kedua-dua pihak merayu terhadap keputusan itu ke Mahkamah Rayuan ('MR') yang sebulat suara mengesahkan penolakan tuntutan fitnah tetapi membenarkan tuntutan balas responden. MR berpendapat, antara lain, bahawa: (a) terdapat perjanjian lisan antara perayu dan responden untuk mendapatkan talian kredit dan rebat pusingan untuk tujuan perjudian di Naga Casino; (b) tuntutan balas bukanlah untuk pemulihan hutang perjudian; dan (c) kemudahan kredit yang diberikan kepada perayu adalah bersifat pinjaman untuk membolehkannya membeli cip perjudian di kasino. Mahkamah Persekutuan memberi kebenaran kepada perayu untuk merayu terhadap keputusan MR.

Diputuskan, sebulat suara membenarkan rayuan, mengenepikan keputusan MR untuk tuntutan balas dan mengembalikan keputusan Mahkamah Tinggi:

(1) Di bawah undang-undang Malaysia, sebarang kontrak atau perjanjian perjudian atau pertaruhan adalah menyalahi undang-undang dan terbatal dan sebarang tindakan untuk mendapatkan semula hutang perjudian tidak boleh dikuatkuasakan — menurut s 26 Akta Undang-Undang Sivil 1956 ('AUUS') dan ss 31 dan 24 Akta Kontrak 1950 ('AK') (lihat perenggan 30–34).

(2) Adalah tidak dipertikaikan bahawa talian kredit dan rebat pusingan yang diberikan kepada perayu adalah semata-mata untuk membolehkannya membeli cip perjudian Naga Casino supaya dia boleh berjudi di kasino tersebut. Oleh itu, kemudahan kredit tidak boleh dimaksudkan sebagai pinjaman tulen yang bebas dari aktiviti perjudian perayu di kasino. Realiti urus niaga itu perlu diperiksa secara objektif dan keseluruhan. Dalam kes ini, realitinya adalah bahawa pemberian kemudahan kredit kepada perayu adalah untuk transaksi perjudian atau pertaruhan yang mana ianya terbatal dan tidak sah di bawah s 26 AUUS dan s 31 AK dan juga bertentangan dengan dasar awam di bawah s 24(d) AK. Hakikatnya, responden menuntut untuk mendapatkan semula hutang perjudian. Tuntutan sedemikian tidak boleh dikuatkuasakan di bawah undang-undang Malaysia (lihat perenggan 38, 41, 43, 69, 82–83 & 92).

(3) Perjanjian STG yang ditandatangani antara Naga Casino dan Huang Group mengukuhkan fakta bahawa pemberian kemudahan kredit kepada pemain untuk berjudi di Naga Casino adalah sebahagian daripada urus niaga perjudian. Sebarang aktiviti perjudian di kasino terpaksa menggunakan cip kasino sebagai satu-satunya tender sah yang boleh diterima di sana. Kemudahan kredit yang diberikan kepada perayu untuk membeli cip kasino boleh dimaksudkan sebagai sebahagian dari kontrak perjudian (lihat perenggan 48, 55 & 61).

(4) Kebergantungan responden terhadap kes *Wynn Resorts (Macau) SA v Poh Yang Hong* [2019] MLJU 2003 tidak dapat dipertahankan. Kes itu bukan lagi undang-undang yang baik. Hakim perbicaraan dalam kes itu tidak mempertimbangkan realiti transaksi dalam memberikan kemudahan kredit kepada defendan, sama seperti MR yang telah gagal mempertimbangkan realiti transaksi dalam kes ini. Hakikatnya, kemudahan kredit dalam kes *Wynn* adalah untuk mendapatkan cip kasino untuk perjudian dan tanpa sebab lain. Ianya adalah sebahagian dari kontrak perjudian. Sekadar menandatangani perjanjian kredit tidak menjadikan transaksi itu sah dan boleh dikuatkuasakan. Perjanjian kredit tidak boleh dipisahkan daripada transaksi perjudian di kasino kerana kemudahan kredit yang diberikan merupakan komponen penting dalam aktiviti perjudian yang hanya menggunakan cip kasino. Untuk menerima ratio dalam kes *Wynn* akan menyalahi niat badan

perundangan dalam menggubal undang-undang untuk mengekang aktiviti perjudian atau pertaruhan (lihat perenggan 71–73).

(5) Hujahan responden bahawa keengganan Mahkamah Persekutuan untuk memberikan kebenaran merayu dalam kes *Wynn* bermakna mahkamah bersetuju dengan keputusan MR mengenai merit adalah tidak tepat. Dalam permohonan kebenaran, Mahkamah Persekutuan hanya mempertimbangkan sama ada keperluan s 96 Akta Mahkamah Kehakiman 1964 telah dipenuhi; iaitu sama ada terdapat sebarang isu baru atau sama ada keputusan selanjutnya oleh Mahkamah Persekutuan memberi manfaat kepada awam. Merit kes itu bukanlah salah satu pertimbangan dalam permohonan kebenaran tersebut (lihat perenggan 76).]

Cases referred to

CHT Ltd v Ward [1965] 2 QB 63, CA (refd)
Carlill v The Carbolic Smoke Ball Co [1892] 2 QB 484, QBD (refd)
Cheng Swee Tiang v PP [1964] 1 MLJ 291 (refd)
Datuk Syed Kechik bin Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation & Ors and another application [1999] 1 MLJ 257, FC (refd)
Hill v William Hill (Park Lane) Ltd [1949] 2 All ER 452, HL (refd)
John Lo Thau Fah v FACB Resorts Bhd [2011] MLJU 1577; [2012] 1 CLJ 581, CA (refd)
Jupiters Limited (Trading as Conrad International Treasury Casino) v Lim Kin Tong [2005] MLJU 534; [2006] 5 CLJ 277, HC (refd)
Jupiters Ltd (trading as Conrad International Treasury Casino) v Gan Kok Beng & Anor [2007] 7 MLJ 228, HC (refd)
Law v Dearnley [1950] 1 KB 400, CA (refd)
Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors [1999] 5 MLJ 558, HC (refd)
Ritz Hotel Casino Ltd v Al Daher [2015] 4 All ER 222, QBD (refd)
Sababumi (Sandakan) Sdn Bhd v Datuk Yap Pak Leong [1995] MLJU 276; [1995] 3 CLJ 256, HC (refd)
Star City Pty Ltd (FKA Sydney Harbour Casino Pty Ltd) v Tan Hong Woon [2002] 2 SLR 22; [2002] 1 SLR(R) 306, CA (refd)
Star Cruise Services Ltd v Overseas Union Bank Ltd [1999] 2 SLR 412, HC (refd)
Swan v Bank of Scotland (1835) 10 Bli NS 627, HL (refd)
Terengganu Forest Products Sdn Bhd v Cosco Container Lines Co Ltd & Anor and other applications [2011] 1 MLJ 25; [2011] 1 CLJ 51, FC (refd)
The Ritz Hotel Casino Ltd & Anor v Datuk Seri Osu Haji Sukam [2005] 6 MLJ 760, HC (refd)
Wynn Resorts (Macau) SA v Poh Yang Hong [2019] MLJU 2003, HC (overd)

Legislation referred to

Civil Law Act 1909 [SG] s 5(1), (2), (6)
Civil Law Act 1956 ss 5(2), 26, 26(1), (2), (4)
Common Gaming Houses Act 1953
Contracts Act 1950 ss 24, 24(d), 31, 31(1)
Courts of Judicature Act 1964 s 96
Gambling Act 2005 [UK]
Gaming Act 1892 [UK] ss 1, 335, Part 17, Chapter 19
Gaming Act 1945 [UK] s 18

Appeal from: *Ting Siu Hua v Dato' Ting Ching Lee and another appeal* [2024] 6 MLJ 891 (Court of Appeal, Putrajaya)

Shankar Ram (with Bong Ah Loi, Lai Wong Hui and Boston Ho Teck Howe) (Suhaili & Bong Advocates) for the appellant.
Lim Heng Choo (with Roger Chin and Analissa Lim) (Lim & Lim Advocates) for the respondent.

Nordin Hassan FCJ:

INTRODUCTION

[1] This is an appeal by Dato Ting Ching Lee, the appellant, against the Court of Appeal's decision to allow the respondent, Ting Siu Hua's counterclaim. The appellant was the first plaintiff and the respondent was the defendant at the High Court. The respondent's counterclaim was for the recovery of monies for two lines of credit totaling USD1.5m and the advance of rolling rebate for USD193,800 for gambling at Naga Casino, Cambodia.

[2] The pertinent and interesting legal issues in the present appeal concern the Malaysian's position on recovering monies related to gambling or wagering and the application of s 26 of the Civil Law Act 1956, and ss 24 and 31 of the Contracts Act 1950. Further, whether the present facts of the case, trigger the application of the said sections in light of the decision by the High Court in *Wynn Resorts (Macau) SA v Poh Yang Hong* [2019] MLJU 2003 affirmed by the Court of Appeal and the application for leave to appeal to the Federal Court was dismissed.

[3] On 6 August 2024 the appellant's application for leave to appeal to this court was granted on one question of law which is as follows:

> In construing whether any claim for monies given in the form of credit amounts to a gambling debt or otherwise, should the approach be the approach adopted by the Singapore Court of Appeal in *Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v Tan Hong Woon* [2002] 1 SLR (R) 306, ie to ascertain the overall

purpose of the same by considering it in its entirety as a composite contract?

THE BACKGROUND FACTS

[4] The appellant is a businessman from Bintulu, Sarawak, and holds various positions in associations and social bodies in Sarawak.

[5] The respondent is a tour agent and since the year 2000, he was appointed as a promoter or junket by Huang Yu Kiung under the name of Huang Group to bring players to gamble at casinos. As a junket, the respondent was paid by Huang Group on a commission basis which essentially depends on the amount of collection of payments by Huang Group from the players that the respondent brought to gamble at the casinos.

[6] On 1 March 2014, Huang Yu Kiung, as STG Operator, and Naga World Ltd signed an STG operator incentive program agreement ('STG agreement') to conduct STG business. STG business as defined under cl 1.1 of the agreement is the business whereby the STG operator's pool of players or group of players is brought to the physical premise of Naga Casino for wagering for benefits as specified in Schedule 7 of the agreement.

[7] On 24 December 2014, while in Bintulu Sarawak, the respondent received a telephone call from one Ting Sing King inquiring whether he could arrange a gambling trip to Cambodia for his superior, the appellant, and a few others. After having discussed the details including the line of credit to gamble at Naga Casino Cambodia, the respondent arranged the trip for the appellant, Ting Heng Ngoung, Ngu Toh Yi, Lee Chew Sing, and Ting Sing King to Naga Casino Cambodia from 8–10 January 2015 for gambling at the International Floor, Level 6 of Naga Casino, Cambodia.

[8] Upon the request by the appellant, on 8 January 2015 he was granted a line of credit of USD1m to gamble at the Casino, and on 9 January 2015 a line of credit of USD500,000 was further given to him. In addition, on 10 January 2015, he was granted a rolling rebate of USD193,800. Tan Sing King on the other hand was given a credit line of USD50,000 to gamble and at Level 6 International Floor of the Casino, the casino chips were given to the appellant and others to gamble based on the lines of credit granted to them. Exhibits D4, D5, and D6 disclosed that Huang Group granted the lines of credits and the rolling rebate, and the documents were signed by Tan Hui Phin (DW2), the Supervisor of Huang Group at Cambodia in the Naga Casino.

[9] After the gambling trip to Cambodia and upon returning to Sarawak, the appellant, Ting Heng Ngoung, and Ngu Toh Yi alleged that on 17 January 2015, the respondent wrote and published or caused to be written or published

defamatory statements against them in *Sin Chew Daily News*, a mandarin language newspaper. The publication also includes the photographs of them. The English translation of the statements is the following:

> The above 3 persons have debt owed to our company, you are required to appear personally within one week to resolve it, failing which action according to law will be taken against you, and bear the consequences. Contact number: 012796976

[10] Further, the appellant and the two others alleged that on 18 January 2015, the respondent wrote and published or caused to be written or published in the respondent's WeChat account or his agent or servant's WeChat account, the same statements appearing in the *Sin Chew Daily News* newspaper which is defamatory of them.

[11] In the circumstances, the appellant, Ting Heng Ngoung and Ngu Toh Yi filed a defamation suit at the High Court against the respondent. The relief sought was for damages and an injunction to restrain the respondent or his agent from further publishing the defamatory statements.

[12] In turn, the respondent filed a counterclaim against the appellant seeking the recovery of monies based on the two lines of credit in the amount of USD1.5m and rolling rebate of USD193,800 or RM6,097,680 which was granted to the appellant for gambling at Naga Casino, Cambodia.

PROCEEDINGS AT THE HIGH COURT

[13] Having considered the evidence presented, the trial judge decided that all the plaintiffs had failed to establish the defamation suit against the respondent as no evidence was adduced to prove that the respondent had on his own or through his agent written or published the purported defamatory statements as appeared in the *Sin Chew Daily News* newspaper or the WeChat account.

[14] As to the respondent's counterclaim for the recovery of monies, the court held that the counterclaim is an attempt to recover gambling debts which is null, illegal, and void under ss 24 and 31 of the Contracts Act 1950 and s 26 of the Civil Law Act 1956. The trial judge also endorsed that the enforcement of gambling debts is against public policy and forbidden by law. In addition, a gambling contract is considered *nudum pactum* (empty contract) which is unenforceable under the law. In coming to the said decision, the trial judge among others, considered the following authorities: *Jupiters Limited (Trading as Conrad International Treasury Casino) v Lim Kin Tong* [2005] MLJU 534; *Sababumi (Sandakan) Sdn Bhd v Datuk Yap Pak Leong* [1995] MLJU 276; [1995] 3 CLJ 256; *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR 412 and *Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors*

A [1999] 5 MLJ 558.

[15] As a result, the High Court dismissed both the appellant's claim with two others and the respondent's counterclaim. Aggrieved by the decision, both parties filed an appeal to the Court of Appeal.

B

PROCEEDINGS AT THE COURT OF APPEAL

[16] In a unanimous decision, the Court of Appeal affirmed the decision of the High Court in dismissing the appellant and two other claims for defamation but allowed the appeal by the respondent in its claim for the recovery of monies for the two lines of credit and the rolling rebate.

C

[17] The Court of Appeal held that the trial judge was not plainly wrong in dismissing the appellant's and two others' claims for defamation against the respondent based on their failure to prove directly or by circumstantial evidence that it was the respondent who had published the alleged defamatory statement.

D

E **[18]** As to the respondent's counterclaim, the Court of Appeal decided that there was an oral agreement between the appellant and the respondent to obtain the credit lines for the purpose of gambling at Naga Casino. The evidence relied upon by the Court of Appeal among others, is as follows:

F (a) on 24 December 2014 in Bintulu, the appellant through his agent, Ting Sing King, requested a line of credit of USD1m for gambling at Naga Casino;

(b) the respondent agreed to grant the line of credit to the appellant for the sum of USD1m as he had known the appellant for over 20 years and had earlier arranged similar credit lines for the appellant for gambling purposes;

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(c) on 8 January 2015, Tan Hui Phin ('DW1') contacted the respondent when the appellant and Ting Sing King were at Level 6 International Floor of Naga Casino and requested their chips under their lines of credit;

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(d) on 9 January 2015, DW1 again called the respondent when the appellant through Ting Sing King requested the second line of credit for USD500,000 which the respondent granted;

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(e) on 10 January 2015, the respondent allowed the rolling rebate of USD193,800 requested by the appellant through Ting Sing King; and

(f) DW1 looked after the appellant and other members of the group at the Casino and was responsible for recording the issuance of casino chips

based on the lines of credits granted to them.

[19] Further, the Court of Appeal held that the oral contract between the respondent and the appellant over the two lines of credit amounting to USD1.5m and the rolling rebate of USD193,800 are not gambling debts. The lines of credit and rolling rebates were only for obtaining the gambling chips and it was the gambling chips that the appellant used to bet at the casino. The two lines of credit and the rolling rebate are in the nature of loan or credit given to the appellant to enable him to cash them into gambling chips. To understand the reasoning of the Court of Appeal it is appropriate to quote the exact statements made in paras 63 and 64 of the Court of Appeal's grounds of judgment as follows:

> [63] DW1 has given evidence that after confirming with the defendant that the first plaintiff is granted to use two lines of credits amounting to USD1.5m and the rolling rebates of USD193,800, DW1 then went to cash the two lines of credits and the rolling rebates into gambling chips. It was the gambling chips that the first plaintiff used to gamble at the casino.
>
> [64] We are therefore of the considered opinion that the learned Judge was plainly wrong in his finding that the defendant was attempting to recover gambling debts, that were owed by the first plaintiff to him. The two lines of credit and the rolling rebates are not gambling debts. *They are in the nature of a loan or credit given to the first plaintiff to enable him to cash them into gambling chips. The first plaintiff did not give evidence that he was gambling with the credit lines and rolling rebates.* As explained by DW1, the first plaintiff was only gambling at the casino after the issuance of the gambling chips. *The gambling debts, if any, would be between the first plaintiff and the casino concerned.* (Emphasis added.)

[20] The Court of Appeal also relied heavily on the decision in the case of *Wynn Resort (Macau) SA v Poh Yang Hong* in coming to this decision.

THE APPEAL

[21] The sole question of law granted for the present appeal as alluded to earlier and reproduced below for convenience:

> In construing whether any claim for monies given in the form of credit amounts to a gambling debt or otherwise, should the approach be the approach adopted by the Singapore Court of Appeal in *Star City Pty Ltd (formerly known as Sydney Harbour Casino Pty Ltd) v Tan Hong Woon* [2002] 1 SLR (R) 306, ie to ascertain the overall purpose of the same by considering it in its entirety as a composite contract?

[22] Before answering the above leave question, the main issues in this appeal are whether the credit facilities or credit agreements granted to the appellant for the sole purpose of gambling is a gaming contract and whether the

A sum claim by the respondent is a gambling debt unenforceable under Malaysian law.

SUBMISSION BY PARTIES

B **[23]** In essence, the appellant submitted first, that the underlying nature of the transaction and its purpose in the present case should be considered as a composite contract. Based on the evidence and transactions in this case the appellant contended that the respondent's claim was for recovery of gambling debts or action to recover money won upon wagers and not an ordinary loan.
C As such, the respondent's action is unenforceable under s 26 of the Civil Law Act 1956, and ss 24 and 31 of the Contracts Act 1950. The appellant heavily relied upon the Singapore apex court's case of *Star City Pty Ltd* to support the contention. In addition, the appellant brought our attention to the decision of the Malaysian courts that was consistent with the appellant's submission. The
D cases among others are *Jupiters Limited (Trading as Conrad International Treasury Casino) v Lim Kin Tong* [2005] MLJU 534; [2006] 5 CLJ 277, *Jupiters Ltd (trading as Conrad International Treasury Casino) v Gan Kok Beng & Anor* [2007] 7 MLJ 228*, Pet Far Eastern (M) Sdn Bhd v Tay Young Huat & Ors* [1999] 5 MLJ 558 and *The Ritz Hotel Casino Ltd & Anor v Datuk Seri Osu*
E *Haji Sukam* [2005] 6 MLJ 760.

[24] The appellant further contended that the High Court decision in *Wynn Resorts (Macau) SA v Poh Yang Hong* and affirmed by the Court of Appeal was
F wrongly decided as the court misunderstood the nature and mechanics of a gaming transaction and the result of a gaming contract which would breach s 26 of the Civil Law Act 1956 and ss 24 and 31 of the Contracts Act 1950. The decision in the *Wynn* case would also make the provisions abovementioned superfluous.

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[25] The appellant also submitted that besides Singapore, other foreign jurisdictions that have similar statutory provisions had decided that no action can be brought or maintained to recover monies related to gambling or wagering. Specific references were made to the decisions of the courts in New
H Zealand, Ireland, and India.

[26] Therefore, it was the appellant's submission that the leave question in the present case be answered in the affirmative.

I **[27]** Conversely, the respondent submitted that the respondent's claims on the two lines of credit and the rolling rebate were not gambling debts but credit facilities in the form of an oral agreement that did not involve any uncertainty in the outcome of the two lines of credit and the rolling rebate. The gaming and wagering activities were between the appellant and Naga Casino in Cambodia.

[28] Further, the respondent contended that the granting of the two lines of credit and the rolling rebate to legally gamble at Naga Casino was not against public policy under s 24(d) of the Contracts Act 1950, and as such, the claim for its recovery is valid and enforceable.

[29] Counsel for the respondent further submitted that the decision in *Star City*'s case should not be followed in the present case but instead accept the decision in *Wynn Resorts* which was affirmed by the Court of Appeal and application for leave to appeal to the Federal Court was dismissed. Thus, the decision of *Wynn Resorts* has been examined by this court in refusing to grant the leave application. In addition, the leave question in the present case has been answered in *Wynn Resorts* which this court should answer in the negative and uphold the decision in *Wynn Resorts* and the Court of Appeal's decision in the present case.

THE LAW

[30] It is apposite at this juncture, to first examine the relevant provisions of the law. They are as follows:

(a) Contracts Act 1950:

(i) s 24:

(a) it is *forbidden by a law*;

(b) it is of such a nature that, *if permitted, it would defeat any law*;

(c) it is fraudulent;

(d) it involves or implies injury to the person or property of another; or *opposed to public policy*;

(e) the court regards it as immoral, or

In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. (Emphasis added.)

(ii) s 31:

(1) *Agreements by way of wager are void*; and n*o suit shall be brought for recovering anything alleged to be won on any wager*, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. (Emphasis added.)

(b) Civil Law Act 1956:

(i) s 26:

(1) *All contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void.*

A (2) *No action shall be brought or maintained in any Court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.*

B (3) Subsections (1) and (2) shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or toward any plate, prize, or sum of money to be awarded to the winner of any lawful game, sport, pastime or exercise.

C (4) Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by subsections (1) and (2), or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money. (Emphasis added.)

D

[31] The letter of the law abovementioned is plain and unambiguous which needs no further interpretation. Under s 24 of the Contracts Act 1950, an agreement is unlawful if, amongst others, it is forbidden by law, if permitted E would defeat any law or opposes public policy.

[32] Next, s 31 of the same Act provides that an agreement by way of wager is void and no suit shall be brought to court to recover monies arising from such contract.

F

[33] Further, s 26 of the Civil Law Act 1956 reinforced the provision of s 31 of the Contracts Act 1950 which provides that all contracts or agreements, either oral or in writing by way of gaming or wagering are null and void and the G recovery of monies from such contracts or agreements are unenforceable in court.

[34] In a nutshell, any gaming and wagering contract is unlawful and gambling debt are unenforceable under Malaysian law.

H

[35] In addressing the issue before this court, firstly, it is pertinent to examine the meaning of gaming, wagering, or wagering contract, under the statute or case law. In the Common Gaming Houses Act 1953, the word 'gaming' is defined as follows:

I

> *'gaming'* with its grammatical variations and cognate expressions *means the playing of any game of chance or of mixed chance and skill for money or money's worth* and includes the playing of any game specified in Column I of the First and Second Schedules and the playing or operation of any gaming machine. (Emphasis added.)

[36] On the other hand, the words 'wagering' or 'wagering contract' are not defined under any of the statutes but are explained by case laws. In a landmark case of *Carlill v The Carbolic Smoke Ball Co* [1892] 2 QB 484 Hawkins J explained what a wagering contract compared to the ordinary contract in the following manner:

> It is not easy to define with precision what amounts to a wagering contract, nor the narrow line of demarcation which separates a wagering from an ordinary contract; but, according to my view, *a wagering contract is one by which two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree that dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither the contracting parties having any other interest in that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties. It is essential to a wagering contract that each party may under it either win or lose, whether he will win or lose being dependent on the issue of the event, and, therefore, remaining uncertain until the issue is known. If either of the parties may win but cannot lose*, or may lose but cannot win, it is not a wagering contract. (Emphasis added.)

(See also *John Lo Thau Fah v FACB Resorts Bhd* [2011] MLJU 1577; [2012] 1 CLJ 581.)

THE ANALYSIS AND DECISION OF THIS COURT

[37] In the present case, the first essential question is whether there was a gaming or wagering contract when the appellant was granted the credit lines and the rolling rebate by Huang Group to the appellant. Next, whether the granting of the credit lines and rolling rebate was independent of the gaming activities by the appellant at the casino and to be considered a pure loan and enforceable under Malaysian law. Further, whether the recovery of money based on credit lines and rolling rebate is the recovery of gambling debt unenforceable under Malaysian law.

[38] It is undisputed that the credit lines and the rolling rebate were for the appellant to purchase the Naga Casino's gambling chips so he could gamble at the casino. That was what he did and he lost and had to pay for the amount of the credit lines and rolling rebate. Now, the main issue here is whether the granting of credit lines and the rolling rebate was a loan distinct from the appellant's gaming activities in Naga Casino and as such is not a gambling debt or whether it is a composite contract with the gaming activities by the appellant at the Naga Casino.

[39] In answering the novel question above, first and foremost, we need to understand the purpose of the legislature to enact the above-mentioned

provisions vis a vis ss 24 and 31 of the Contracts Act 1950 and s 26 of the Civil Law Act 1956. There is no other but to curb gambling or wagering activities. These activities are only allowable upon the issuance of a license by the authorities. As mentioned earlier, the express provisions of the sections speak volumes about the legislature's intention to curb gaming or wagering activities.

[40] The above view is further also fortified upon examining the debates in Parliament on gaming activities as disclosed in the *Hansard* on 15 June 2023 as follows:

> Datuk Seri Nasution bin Ismail:
>
> Gambling industry ini Tuan Yang Di Pertua, whether it is online or offline. Government memang ada significant concern. *The government is actively taking measures to combat it*, dengan izin. Memang kita memberi keprihatinan yang tinggi yang signifikan dan *memang kita secara aktif mengambil langkah untuk combat*. Tidak kira daripada segi online atau offline. (Emphasis added.)

[41] Reverting to the issues at hand, was the granting of the credit lines and rolling rebate in the present case a genuine loan distinct from the gaming activities by the appellant at the Naga Casino? In my view, it cannot be so, the credit facilities were meant for the sole purpose of gambling at the Naga Casino. Without the credit facilities, the appellant obviously could not obtain the casino chips for gambling. Further, the credit facilities could not be used for other purposes but for gambling at Naga Casino. Thus, the credit facilities could not be termed as a genuine loan independent of the appellant's gaming activities at Naga Casino.

[42] The respondent also in his testimony admitted that the credit facilities granted to the appellant were for gambling purposes. In his written statement dated 21 January 2019, the answer to question 7, the respondent among others said this:

> (h) The 1st Plaintiff *had gambled* and accumulated the total rollings of USD19,380,000.00 ...
>
> (i) The two lines of credits totaling USD1,500,000.00 were not cash and to be given in casino chips at Naga Casino for the *purpose of gambling*. (Emphasis added.)

[43] This court should not ignore or brush aside the glaring fact that the credit facilities were for gambling purposes and accept that they were pure loans. The reality of the transactions must be examined objectively and in totality. In the present case, the reality is that granting the credit facilities to the appellant was gaming or wagering transactions. To conclude otherwise is to allow parties to get around the law and indirectly defeat the law.

[44] Our position on gaming or waging contracts is almost similar to the earlier position in England. Section 18 of the Gaming Act 1945 of England, which was later replaced by the Gambling Act 2005, provides:

> *All contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void*; and *no suit shall be brought or maintained in any court of law and equity for recovering any sum of money or valuable thing alleged to be won any wager*, or which shall have been deposited in the hands of any person to abide the event of which any wager shall have been made. (Emphasis added.)

[45] In *Law v Dearnley* [1950] 1 KB 400, the brief facts were the plaintiff laid bets on horse races with a firm of bookmakers. A loss had resulted, and the plaintiff communicated the bookmakers' account of winnings and losses to the defendant, who, while orally agreeing with the accuracy of the accounts, failed to reimburse the plaintiff the sum paid to the bookmaker. The defendant pleaded the defence of the Gaming Act 1892 against the plaintiff's action on the account stated. The plaintiff's action was struck out on the ground that the statement of claim disclosed no reasonable cause of action, frivolous and vexatious. On appeal, the Court of Appeal held that the court had to look at the reality of the transaction and that the account stated being in respect of betting transactions, the action was rendered null and void by s 1 of the Gaming Act 1892 and had been rightly struck out. Tucker LJ said this:

> As I have said before, until the recent effort to get around the Gaming Act by means of action of this kind, it had always been recognized that such an obvious dodge, if I may use the word, was doomed to failure. That being the case, the law now having been definitely settled to that effect by the decision of Streatfeild J, which I think is clearly right, *in my opinion it is the duty of this court to see that actions which are in reality actions in respect of betting transaction only but are given the guise of legitimate transactions by being described as accounts stated, should not be allowed to continue*. For these reasons, I think that this appeal fails. (Emphasis added.)

(See also *Hill v William Hill (Park Lane) Ltd* [1949] 2 All ER 452; *Ritz Hotel Casino Ltd v Al Daher* [2015] 4 All ER 222.)

[46] Likewise in the present case, this court cannot accept the credit facilities granted to the appellant as pure loans and were legitimate transactions. The guise of legitimate transactions in whatever terms used should not shackle the long arm of the law to have its effect. As mentioned earlier, the reality is that it was a gaming or wagering transaction, and without credit facilities, the appellant could not gamble at Naga Casino. The term loans in reference to the credit facilities to the appellant is actually a gambling debt unenforceable under Malaysian law.

[47] The principle of the reality of transactions discussed above was correctly followed in Malaysian jurisdiction where in *Pet Far Eastern (M) Sdn Bhd v Tay*

Young Huat & Ors [1999] 5 MLJ 558, the court explained:

> It was around this time, that the unscrupulous in England devised a practice distinguishing gambling debts as account stated. But the English Courts were very alert. In *Law v Dearnly* [1950] 1 KB 400 (CA) the Court of Appeal looked at the reality of the transaction and held that the account stated being in respect of betting transactions were considered to be null and void under the Gaming Acts. The Court of Appeal in another case by the name of *MacDonald v Green* [1951] 1 KB 594 (CA) saw through the arrangement and quickly recognized the true nature of the transaction was to recover the defendant's betting losses. According to Asqiuth LJ, *the loan label was nothing more than a ruse to get around the Gaming Acts*.
>
> In my judgment, *false labelling of gambling debt as an account stated or as a loan cannot derogate it from the gambling debt. A rose is still a rose no matter what you call it. The court must look at the reality of the transaction and decide once and for all without fear or favour. To me, the device of using chips on board the cruise ship or vessel MV Amusement World by the second defendant was a mere sham to circumvent the CGH Act and the Betting Act. The matter arose out of a betting transaction, although the second defendant called it a contract. Under the Malaysian law, such a transaction was absolutely void.* (Emphasis added.)

[48] In the present case, the credit lines and rolling rebate granted to the appellant undeniably arose from gaming transactions at Naga Casino. In addition, the STG agreement signed between Naga Casino and Huang Group further fortified the granting of credit facilities to the players to gamble at Naga Casino, is part and parcel of the gaming transactions.

[49] In the STG agreement, cl 1.1 defines 'STG Business' as follows:

> 'STG Business' means the business whereby the STG Operator's pool of players or group of players brought to the physical premise of the prescribed Gaming Hall from the geographical area as specified in Schedule 3 herein to Naga *for the purpose of wagering* in return for benefits as specified in Schedule 7 herein. (Emphasis added.)

[50] Clause 3.5 of the agreement provides among others that Naga Casino will sell the casino chips to the STG operator which is to be used for gaming and wagering at Naga Casino. The clause states:

> *Naga shall sell the Non-Negotiable and cash chips to the STG Operator* from time to time during the term of the STG Operator Agreement and *the said chips shall be utilized and applied for the conduct of gaming and wagering* in the Prescribed Gaming Hall. (Emphasis added.)

[51] Next, Naga Casino also would grant the STG operator a cheque-cashing facility to a maximum of SGD2m as provided under cl 5.1.2 as follows:

Naga hereby agrees to grant the STG Operator a cheque cashing facility (the Cheque-Cashing Facility) up to a maximum of SGD 2 million the terms and conditions of which are specified in Application for Cheque Cashing Facility Form.

[52] Further, the gaming activities at Naga Casino only involve the casino chips approved by Naga Casino. Clause 6.6 of the STG agreement provides as follows:

The STG Operator undertakes and warrants to conduct the business using chips as provided in Schedule 8 of the Agreement.

[53] Schedule 8 of the agreement provides:

1. The STG Operator *must use the gaming chips approved by Naga* and shall warrant at all times not to make or introduce in the Prescribed Gaming Hall chips which are not authorized and approved by Naga.

2. The STG Operator may buy any amount of chips both cash or non-negotiable from Naga from time to time during the term of the STG Agreement.

3. The *legal tender for cash in the Prescribed Gaming Hall is the Casino Chips purchased, authorized, and approved by Naga*. The total amount of the non-negotiable chips and the cash chips purchased from Naga and possessed by the STG Operator and or the STG Operator's nominees shall be utilized and applied for conduct of gaming and wagering in the Prescribed Gaming Hall. (Emphasis added.)

[54] Another important clause in the STG agreement is the sharing of a percentage of wins or losses in the insurance bets as provided under para 3 of Schedule 6 of the agreement:

The Parties shall further share the wins or losses derived from the insurance bets in the Prescribed Gaming Hall in the following manner:

STG Operator — 80%

Naga — 20%

[55] Having examined the relevant provision of the STG agreement signed between Huang Group and Naga Casino, any gambling activities at Naga must use Naga Casino's chips and it is the legal tender in the Casino. In the circumstances, the granting of credit facilities to the appellant to buy Naga Casino's chips for gambling was in line with the STG agreement agreed by the parties. Therefore, it is beyond doubt that the granting of the credit facilities to the appellant is part of the gaming and wagering transactions at Naga Casino.

[56] The evidence disclosed that Huang Group was the party that granted the credit lines of USD1.5m and rolling rebate of USD193,800 to the appellant. The respondent was only a junket for Huang Group and was paid a

commission for his service in bringing players including the appellant to gamble at Naga Casino.

[57] In his testimony, the respondent said:

> Q: Refer to paragraph 2 of the Amended Defence. Your role as a junket is to bring players to gamble at the casino, is that correct?
>
> A: *Yes.*
>
> ...
>
> Q: As a junket, you are paid by Huang Group based on commission basis, is that correct?
>
> A: *Yes.*
>
> Q: Is your commission paid to you on a weekly or monthly basis?
>
> A: *All depends, it depends on the collection of the payment from players to me and then I would transmit to Huang Group once a week or once in two weeks' time.*
>
> Q: I think you said in Chinese that your collection is on behalf of Huang's Group. Correct?
>
> A: *Yes.*
>
> Q: In order to ascertain your commission, the Huang Group must have provided you with a statement showing the names of your players. Do you agree?
>
> A: *Yes.*
>
> Q: Do you agree that the document identifying your commission will show the amount of gambling by your players?
>
> A: *Yes.* (Emphasis added.)

[58] The respondent also admitted in his evidence that his 'principal' was Huang's Group. This was what he said:

> Q: With reference to your instruction that the alleged amount is owing to your 'principal', can you tell us whether that refers to the Huang Group or Naga Casino, or anybody else?
>
> A: *Huang's Group.* (Emphasis added.)

[59] Further, the respondent confirmed that the lines of credit and the rolling rebate were granted to the appellant by the Huang Group. In the respondent's testimony, this was disclosed:

> Q: And now I refer you to paragraph 11 at page 85 of CBOD, here you are also affirmed that the line of credit that is granted by you on behalf of Huang's Group, is that what you have affirmed?
>
> A: *Yes.* (Emphasis added.)

[60] The above fact is further fortified by the documentary evidence exhs D4, D5, and D6 which disclosed that Huang Group granted the lines of credits and the rolling rebate, and the documents were signed by Tan Hui Phin (DW1), the Supervisor of Huang Group at Cambodia in the Naga Casino.

[61] Since Huang Group granted the credit facilities to the appellant in the present case and Huang Group signed the STG agreement with Naga Casino among others for players to use the casino chips in gambling activities at the casino, the granting of the credit facilities, in the reality of the transaction was a gaming transaction. The credit facilities granted to the appellant for the buying of the casino chips may also be termed as composite gambling contract. Further, casino chips are only a tool for the convenience of the gamblers in the casino without money or money worth. Other transactions, including credit facilities, cash cheque facilities, and other devices would complete the gambling transactions. In *CHT Ltd v Ward* [1965] 2 QB 63, Davis LJ commented:

> People do not game in order to win chips; they game in order to win money. The chips are not money or money's worth; they are mere counters or symbols used for the convenience of all concerned in the gaming.

[62] The principle of reality of transactions was also applicable in our neighbouring country Singapore in addressing the issue of gaming or wagering transactions. Singapore law is the same (*pari materia*) as Malaysian law where any gaming or wagering contract is null and void and unenforceable. It is apposite to reproduce the Singapore provisions in this area of law to assist in a better understanding and clear explanation of the issues.

[63] Sections 5(1), 5(2), and 5(6) of the Singapore Civil Law Act 1909 are *pari materia* with our s 26(1), 26(2) and 26(4) of the Civil Law Act 1956. The Singapore provisions are as follows:

> 5(1) All contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void.
>
> (2) No action shall be brought or maintained in court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.
>
> ...
>
> (6) Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by subsections (1) and (2), or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract or of any services in relation thereto or in connection therewith, shall be null and void, and no such action shall be brought or maintained to recover any such sum of money.

[64] In the Court of Appeal case *Star City Pty Ltd (FKA Sydney Harbour Casino Pty Ltd) v Tan Hong Woon* [2002] 2 SLR 22; [2002] 1 SLR(R) 306 almost a similar issue was raised and decided by the apex court of Singapore. In that case, the respondent handed the appellant a licensed casino in Sydney 5 house cheques in exchange for casino chips for gaming. Each cheque is for the sum of A$50,000. The respondent lost all the A$250m in the gambling. When the cheques were presented to the respondent's bank for payment, they were dishonored due to insufficient funds. The respondent then paid the appellant the sum of A$55,160 leaving an unpaid balance of A$194,840. The appellant brought an action in court to recover the owed sum.

[65] The trial judge among others decided that the appellant's claim was unenforceable as the action was one for money won upon a wager. The decision was affirmed by the apex court which confirmed that the appellant's claim was in essence an action to recover money won upon a wager and was unenforceable under s 5(2) of the Civil Law Act. Recovery of the said monies was contrary to public policy.

[66] In coming to its decision, the court also applied the principle of the transaction's reality in determining the claim's enforceability. Yong Pung How CJ in that case said this:

> 29. Our courts must hence pay attention to the essence of foreign transactions and *must forcefully resist all attempts to evade the provision of the Civil Law Act*. We are further supported in our conclusion by s 9A of the Interpretation Act (Cap 1, 1999 ED) which requires the court, in the interpretation of a statutory provision, to prefer a purposive interpretation which would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) to an interpretation that would not promote that purpose or object. Putting the two principles together, it follows that the court of the forum is entitled to re-characterise a transaction according to the law and logic of *lex fori*. Unlike what Star City contends, *we consider that the trial judge was, in principle, fully justified to look into the reality of the transaction so as to determine whether s 5(2) of the Civil Law Act applied*. The fact that a sum of money won on a wagering contract is valid and enforceable under the law of New South Wales should not prevent the Singapore courts from declining to aid in its enforcement, if to do so *would be contrary to the public policy of Singapore.* (Emphasis added.)

[67] His Lordship in the same case elaborates further as follows:

> 31. However, what is objectionable is courts being used by casinos to enforce gambling debts disguised in the 'form' of loans. Valuable court time and resources that can be better used elsewhere are wasted on the recovery of such unmeritorious claims. The machinery of the courts cannot be used indirectly to legitimize the recovery of money won upon wagers overseas when similar relief would be refused for money won upon wagers in Singapore. *Hence in order to give full effect to s 5(2) of the Civil Law Act, which provides that no action can be brought or maintained to*

enforce gambling debts, the courts of the forum cannot be prevented by the foreign law from investigating into the true nature of the transaction … (Emphasis added.)

[68] The court in that case also ruled that the exchange of a cheque for casino chips is an essential part of the composite gambling contract. On this issue, the court explained:

37 The converse conclusion will mean having to classify the exchange of the cheque for the chips as a sale; for which the casino is giving loan credit on the security of the cheque pending redemption and the gambling at the tables as a transaction that is independent and unconnected to the first. This is against logic and principle: what would a gambler want with the chips except to use them for gambling and gambling alone? A broad view of things must be taken, and this points towards the cheques being used to pay for the gaming chips and any money to be recovered by the casinos as money won/lost upon a wager rather than a true loan: *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548; [1992] 4 All ER 512. *The exchange of a cheque for a CPV and chips is an essential part of the composite gambling contract. It is the means by which gambling is to take place rather than a true security for credit; 'play now and pay later' scheme. For the above reasons, we agree with the trial judge that the sum of AU194,840 was money that Star City had won from Mr Tan on a wagering contract rather than a genuine loan.* (Emphasis added.)

[69] In the present case, as alluded to earlier, the casino chips were exchanged with the amount of credit facilities granted to the appellant. The reality of the transactions was that it was a gambling contract or a composite gambling contract when viewed in totality where its purpose was no other than for gaming or waging. In the circumstances, the said contract contravenes s 26(1) of the Civil Law Act 1956 and the first limb of s 31(1) of the Contracts Act 1950, and as such was null and void from the beginning (*ab initio*).

[70] No rights can arise from a void contract or be sued upon. It is *nudum pactum* or an 'empty contract'. As described by Lord Mansfield in *Swan v Bank of Scotland* (1835) 10 Bli NS 627 'a wagering contract is 'a good for nothing contract'.

[71] Having examined the law on this issue and the reasoning canvassed earlier, I find the respondent's reliance on the case of *Wynn Resorts (Macau) SA v Poh Yang Hong* was untenable. In that case, the material facts are almost similar to the present case where the defendant was granted a gaming facility of up to HK$ 40m to gamble at the plaintiff's casino. He signed a credit agreement with the plaintiff and was given 'gaming chips' of the same amount usable at the casino for gambling only. The defendant lost all the amount in the gambling. He then made a partial payment of the sum leaving an unpaid balance of HK$33,186,554. An action was taken by the plaintiff in court for the recovery of the unpaid sum. The trial judge held among others that the plaintiff's claim was based on gaming credit and not on a wagering or gaming

contract. They are two different transactions and as such the plaintiff's claim was enforceable under our law. The decision was affirmed by the Court of Appeal and the application for leave to appeal to the Federal Court was dismissed.

[72] In *Wynn*'s case, the trial judge did not consider the reality of the transaction in granting the credit facility to the defendant. Likewise, the Court of Appeal in the present case. In reality, the credit facility was to obtain casino chips for gambling and no other. This was a composite gambling contract and a mere signing of a credit agreement does not make the transaction lawful and enforceable under Malaysian law. The credit agreement cannot be separated from the gaming transaction at the casino as the credit facility granted was an essential component of the gambling activities using only the casino chips.

[73] If this court were to accept the ratio in *Wynn*'s case, it would defeat the intention of the Legislature to enact the provisions alluded to earlier and make the said provisions obsolete or redundant. This is because by merely signing a credit agreement, parties can go around the effect of ss 24 and 31(1) of the Contracts Act 1950 and s 26(1) and 26(2) of the Civil Law Act 1956. This could not be the position especially when the government had announced its intention to curb gambling or wagering. The court must be alert to whatever term, system, or devise used to evade the law. The court must enforce the law when it is plain and unambiguous as the provisions mentioned in the present case. Thus, *Wynn*'s case is no longer good law.

[74] It is noted that the position in England has changed upon the repeal of the Gaming Act 1892 and 1945 by the Gambling Act 2005 which took effect from 1 September 2007. Under s 335, Chapter 19, Part 17, the earlier law was replaced with the following provisions:

> 335(1) The fact that a contract relates to gambling shall not prevent its enforcement.
>
> (2) Subsection (1) is without prejudice to any rule of law preventing the enforcement of a contract on the grounds of unlawfulness (other than a rule relating specifically to gambling)

[75] However, the laws in Malaysia and Singapore on gaming contracts and their enforceability remain the same without any amendment. As such, the earlier decision by the English Courts based on its earlier statutes has a persuasive effect.

[76] It is also settled law that the fact that leave to appeal was not granted by the Federal Court does not mean that the Federal Court agrees with the decision of the Court of Appeal on the case's merits. The Federal Court in a

leave application only considers whether the application has fulfilled the threshold of s 96 of the Courts of Judicature Act 1964. Essentially, whether there exists any novel issue or further decision of the Federal Court is of public advantage. The merits of the case are not one of the considerations by the Federal Court in leave application. Thus, the respondent's submission that the Federal Court had considered the merits of the case in *Wynn*'s case is flawed.

(See also the Federal Court cases of *Datuk Syed Kechik bin Syed Mohamed & Anor v The Board of Trustees of the Sabah Foundation & Ors and another application* [1999] 1 MLJ 257 and *Terengganu Forest Products Sdn Bhd v Cosco Container Lines Co Ltd & Anor and other applications* [2011] 1 MLJ 25; [2011] 1 CLJ 51.)

[77] The other pertinent point in the present case is that from the provisions of the law mentioned above, the legislature intended to canvass two main aspects which are the validity as well as the enforceability of such contracts. The validity of such a contract is covered by the first limb of s 31(1) of the Contracts Act 1950 and s 26(1) of the Civil Law Act 1956 whilst the enforceability of such a contract is canvassed by the second limb of s 31(1) of the Contracts Act 1950 and s 26(2) of the Civil Law Act 1956.

[78] On the issue of the enforceability of such a contract, for easy reference, the second limb of s 31(1) of the Contracts Act 1950 and s 26(2) of the Civil Law Act 1956 which provides:

(a) s 31(1) of the Contracts Act 1950:

> ... and *no suit shall be brought for recovering anything alleged to be won on any wager*, (Emphasis added.)

(b) s 26(2) of the Civil Law Act 1956:

> *No action shall be brought or maintained in any Court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.* (Emphasis added.)

[79] The two provisions above do not relate to any gaming or wagering contracts. Meaning that it does not depend on the existence of a gaming or wagering contract for its application. These provisions specified that the recovery of any money or valuable thing won upon any wager is unenforceable. This includes gambling debt irrespective of whether there exists a gaming or wagering contract between the parties.

[80] The same stand was taken in England when discussing s 18 of the Gaming Act 1845, which is *pari materia* to s 31 of our Contracts Act 1950. The

House of Lords in *Hill v William Hill (Park Lane) Ltd* held as follows:

> (ii) *the second branch of s 18 did not relate only to suits brought on wagering contracts declared void by the first branch*, but applied to all suits brought to recover money alleged to have won on a wager, and, therefore, the contract was unenforceable. (Emphasis added.)

[81] Lord Greene in the same case elaborates on this point as follows:

> My Lords, section 18 of the Gaming Act, 1845, *by its first branch makes gaming and wagering agreements null and void. Such contracts, therefore, are struck with invalidity at the outset*, ie before the event contemplated by the wager has occurred. The appropriate consequence of this enactment would be relief before the event by way of declaration, and, perhaps, an order for delivery up of a written agreement as well as relief after the event by way of dismissal of an action to recover the sum won. *The second branch is different. It is concerned with a state of affairs that can only arise after the event. What is prohibits is the bringing of any suit 'for recovering any sum of money or valuable thing alleged to be won upon any wager'*. (Emphasis added.)

[82] Reverting to the present case, whatever the terms or labels used concerning the money claim against the appellant, it was in reality a gambling debt that occurred at the Naga Casino arising from the credit facilities granted to the appellant to gamble. Reading the respondent's pleadings, it is beyond doubt that the respondent was claiming the recovery of the appellant's gambling debts. This is disclosed in the respondent's counterclaim as follows:

> 21. The Defendant had granted a line of credit to the first Plaintiff at Bintulu USD1,000,000.00 for the *sole purpose of gambling* at Naga Casino Cambodia. The trip to Cambodia was with the s*ole purpose of gambling* where the Defendant had granted the initial line of credit of USD1,000,000.00 to the first Plaintiff.
>
> 22. While in Cambodia, the first Plaintiff had requested another line of credit of USD500,000.00 through Ting Sing King. The Defendant had agreed to grant another final line of credit of USD500,000.00 *to enable the first Plaintiff to gamble* at the Naga Casino Cambodia. The Defendant had granted two lines of credit to the first Plaintiff totalling USD1,500,000.00 but rejected the third line of credit of USD500,000.00 on 9.1.2015.
>
> ...
>
> 25. Despite repeated attempts by the Defendant to reach first Plaintiff for payment, the first Plaintiff had deliberately avoided taking the Defendant's phone calls. Consequently the first Plaintiff had refused, failed, or neglected to pay the Defendant USD1,500,000.00 since 14.1.2015 and to refund the rolling rebate of USD193,800.00 till now and continuing.
>
> 26. In the premises, the Defendant claims against the first Plaintiff:
>
> (a) The sum of USD1,500,000.00 (RM5,400,000.00);
>
> (b) The refund of USD193,800.00 (RM697,680.00);

...

[83] The claim against the appellant, in essence, viewed in totality, was for the recovery of money upon gaming or wagering transactions in Naga Casino Cambodia. It was a gambling debt. This claim is unenforceable under Malaysian law as explained earlier.

THE ISSUE OF PUBLIC POLICY

[84] The issue of public policy in the present case is equally important to be addressed by this court. Section 24(d) of the Contracts Act 1950 has provided that considerations or agreements against the public policy are unlawful. Section 31(1) of the same Act and s 26 of the Civil Law Act 1956 as discussed earlier, were enacted to curb gambling activities. Now, the issue here is whether gambling is against public policy in Malaysia.

[85] The doctrine of public policy was touched on in an earlier case of *Cheng Swee Tiang v Public Prosecutor* [1964] 1 MLJ 291 where Wee Chong Jin CJ states:

> Secondly, the use of the d*octrine of public policy* has consistently been frowned upon by the courts. Burrough J (quoting Hobart CJ) said of it in *Richardson v Mellish* 'Public policy is an unruly horse, difficult to ride' Parke B said of it in *Egerton v Brownlow* 'Public policy is a vague and unsatisfactory term ...' it is capable of being understood in different senses, it may, and does, in its ordinary sense, mean 'political expedience' or *that which is best for the common good of the community*; and in that sense, there may be every variety of opinion, according to education, habits, talents, and dispositions of such person, who is to decide, whether an act is against public policy or not. (Emphasis added.)

[86] Next, in the often-quoted description of public policy is what is stated in *Pollock & Mulla on Indian Contract and Specific Relief Act* (10th Ed), which states:

> *Public Policy* — The principle of public policy is this: *ex dolo molo non-oritur* action. Lord Brougham defines public policy as the principle which declares that n*o man can lawfully do that which has the tendency to be injurious to the public welfare*. (Emphasis added.)

[87] Besides the statutory provisions alluded to earlier that directly discourage gambling activities, the courts in Malaysia have taken the stand that gambling is actually against public policy. In *Jupiters Ltd*'s case, the court expressed the following view:

> [48] *There is no doubt that gaming or gambling is injurious to the public welfare of our local society. It is recognised that gambling or gaming should be avoided and therefore it*

> *cannot be good social behavior to indulge in it.* In multi-racial and multi-religious Malaysia, Muslims are expressly prohibited from patronizing casinos and other gambling outlets. Gambling is similarly prohibited by the Bible. The Malaysians of Chinese descent also face the problem of gambling whose associate of is the loan shark (Ah Longs). The Hindus as well the Buddhist also have a disdain for gambling. (Emphasis added.)

[88] Further, in *Pet Far Eastern (M) Sdn Bhd v Tay Young Huat*, the court endorsed the public policy principle by the English courts and said this:

> Later, when the English Gaming Act 1845 was passed — all contracts and agreements entered by way of gaming or wagering became void. The evil of gambling are too well known and too unsavoury to elaborate. *Public policy became the order of the day and the policy was to suppress gambling at all costs*. The courts showed no mercy to gamblers. Section 18 of the English Gaming Act 1845 declared that: (1) the contracts of gaming and wagering are null and void; (2) the winner cannot bring an action to recover his winnings; and (3) the winner cannot sue the stakeholder. These are harsh measures. (Emphasis added.)

[89] In *The Ritz Hotel Casino Ltd & Anor v Datuk Seri Osu Haji Sukam*, the court expressed its view on this issue in the following manner:

> [10] I can go on with citing from other faith or religion but I do not think it is necessary as what I have mentioned is enough justification for saying that it is universally accepted that gambling is a vice. *It is also universally recognised in Malaysia that gambling is evil and against the teaching of our religion and not the least of all that gambling appeals to greed, that is getting richer without having to work*. Belief in God, one of the principles of our national philosophy, must surely mean believing and following the teachings of the religion. *It was mentioned that gambling is allowed under licence in Malaysia but that was because it was to prevent it from being run by the underworld and it was not that it was something that was good*. It is my view that any profit to be made from gambling (and prostitution) can fairly be said to be profit from vice. (Emphasis added.)

[90] Our neighbour country, Singapore, takes the same position as ours. They also took a clear stand that gambling is against public policy. In *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 2 SLR 412, the court expressed this:

> [28] *Public policy*, therefore, was the purpose of the Gaming Acts. *The policy was to suppress gambling on credit and protect property from capture by gamblers. It was also to declare that the courts of justice are out of bounds to gamblers and that the courts will not settle or collect gambling debts.* The courts exist for more important business and will not assist those who make gambling their business. (Emphasis added.)

[91] Likewise in the *Star City* case, the court took a firm stand on the issue of public policy. This is disclosed in the judgment of the court which states as

follows:

> 29 ... The fact that the sum of money won on a wagering contract is valid and enforceable under the law of New South Wales should not prevent the Singapore courts from declining to aid in its enforcement, *if to do so would be contrary to the public policy of Singapore.*
>
> 31 ... *what is objectionable is courts being used by casinos to enforce gambling debts disguised in the 'form' of loans. Valuable court time and resources that can be better used elsewhere are wasted on the recovery of such unmeritorious claims. The machinery of the courts cannot be used indirectly to legitimised the recovery of money won upon wagers* overseas when similar relief would be refused for money won upon wagers in Singapore. Hence in order to give full effect to s 5(2) of the Civil Law Act, which provides that no action can be brought or maintained to enforce gambling debts, the courts of the forum cannot be prevented by foreign law from investigating into the true nature of the transaction. The court of justice must remain out of bounds to claims for money won upon wagers, however cleverly or covertly disguised: *Star Cruise Services Ltd v Overseas Union Bank Ltd* ([24]). It is in this sense that the earlier decision in *Las Vegas Hilton Corp v Khoo Teng Hock Sunny* ([22]) can be distinguished; having felt that there is no public policy against gambling per se, the court naturally did not go further to re-characterise the transaction. However, once it is recognised that the courts should not, as a matter of principle and public policy, act as gambling debt collectors for foreign casinos, we are then obliged to investigate further according to *lex fori*. (Emphasis added.)

[92] On this issue, I echoed the same view as mentioned in the authorities cited above and wish to emphasise here that there is nothing good or beneficial for the public if gambling activities were to be encouraged. That was why the government took a clear stand when voiced its view in Parliament to combat online or offline gambling. The intention of the legislature was also translated in the statutes by ss 24 and 31(1) of the Contracts Act 1950 and s 26 of the Civil Law Act 1956 as elaborated earlier. Public perception of gambling is also without doubt that gambling activities are something bad and should be discouraged. Thus, gambling activities and their transactions are against public policy.

[93] I do not deny that gambling premises are operating in this country but those premises are licensed and regulated under the relevant laws. That does not mean that gambling is not against public policy. As discussed earlier, the negative effect of gambling activities resulted in the government policy to curb gambling activities and enact laws that nullify any gaming contracts and make any claim for recovery of gambling debts unenforceable.

[94] I also wish to dispel any thoughts that the present law is only favourable to gamblers who lose in their gambling activities. The law applies to all parties involved in the gaming transactions. It also applies to the winner of any wagers as they also cannot enforce their claim under Malaysian law. The debt arising

from gambling activities is a debt of honour and not a legal debt. A debt of honour as defined in the *Concise Oxford English Dictionary* is a 'debt that is not legally recoverable, especially a sum lost in gambling'.

CONCLUSION

[95] In the circumstances, the answer to the leave question is in the affirmative. The appellant's appeal is allowed and the decision of the Court of Appeal concerning the respondent's counterclaim is set aside. The decision of the High Court is restored.

[96] The respondent is to pay costs of RM200,000 to the appellant subject to payment of the allocator fee. My learned brothers, the Chief Justice of Sabah and Sarawak Tan Sri Abdul Rahman Sebli and Datuk Abdul Karim Abdul Jalil have read this judgment in draft and have agreed to it.

Appeal allowed; COA's decision with respect to the respondent's counterclaim set aside; and decision of the High Court restored.

Reported by Ashok Kumar